

**Earle Industries, Inc. and Amalgamated Clothing
and Textile Workers Union, Southwest Re-
gional Joint Board. Case 26-CA-15122**

September 23, 1992

DECISION AND ORDER

**BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT**

On July 8, 1992, the General Counsel of the National Labor Relations Board issued a complaint alleging that the Respondent has violated Section 8(a)(5) and (1) and 8(d) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 26-RC-7346. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed its answer admitting in part and denying in part the allegations in the complaint.

On August 24, 1992, the General Counsel filed a Motion for Summary Judgment. On August 25, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Earle Industries, Inc., a corporation with an office and place of business in Earle, Arkan-

sas, has been engaged in the manufacture of closet accessories. During the 12-month period ending June 30, 1992, the Respondent, in the course and conduct of its business operations, sold and shipped from its facility products, goods, and materials valued in excess of \$50,000 directly to points located outside the State of Arkansas and during the same period of time purchased and received at its facility, products, goods, and materials valued in excess of \$50,000 directly from points located outside the State of Arkansas. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held October 25, 1991,¹ the Union was certified on June 4, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

All production and maintenance employees, warehouse employees, shipping employees, and quality control employees employed by Respondent at its Earle, Arkansas facility; excluding all office clerical employees, salespersons, professional employees, technical employees, and guards and supervisors within the meaning of the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since June 11, 1992, the Union has requested the Respondent to bargain and, since July 1, 1992, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after July 1, 1992, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices af-

¹ Pursuant to a Stipulated Election Agreement approved by the Regional Director on February 5, 1991, an election was held on March 8, 1991. The Employer filed objections which were resolved by a hearing officer in a Report on Objections dated May 30, 1991, in which she recommended that the election be set aside and directed a second election. The Board adopted the hearing officer's report in its Decision, Order and Direction of Second Election of August 28, 1991. The second election was held October 25, 1991. The Employer filed objections and on December 5, 1991, the Regional Director issued a Report on Objections recommending that the objections be overruled. On December 18, 1991, the Employer filed exceptions and brief in support to the Regional Director's report. On June 4, 1992, the Board issued a Decision and Certification of Representative adopting the Regional Director's findings and recommending that the Employer's objections be overruled in their entirety and certifying the Union.

fecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Earle Industries, Inc., Earle, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Amalgamated Clothing and Textile Workers Union, Southwest Regional Joint Board, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All production and maintenance employees, warehouse employees, shipping employees, and quality control employees employed by Respondent at its Earle, Arkansas facility; excluding all office clerical employees, salespersons, professional employees, technical employees, and guards and supervisors within the meaning of the Act.

(b) Post at its facility in Earle, Arkansas, copies of the attached notice marked "Appendix."² Copies of

the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

tions Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Amalgamated Clothing and Textile Workers Union, Southwest Regional Joint Board as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All production and maintenance employees, warehouse employees, shipping employees, and quality control employees employed at our Earle, Arkansas facility; excluding all office clerical employees, salespersons, professional employees, technical employees, and guards and supervisors within the meaning of the Act.

EARLE INDUSTRIES, INC.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Rela-